

EXHIBIT E

Junnier, Justin

Volume 1 - 01/14/2020

Summary Proceeding with Highlighted Clips

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CONFIDENTIAL

P counter-counters
(Runtime - 00h:00m:30s)

Defense Counters
(Runtime - 00h:45m:29s)

Plaintiffs Designation
(Runtime - 00h:41m:26s)

Defense Objections (Runtime
- 00h:29m:31s)

Plaintiffs Objections
(Runtime - 00h:13m:42s)

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01: THE VIDEOGRAPHER: This begins the video
02: deposition of Justin Junnier being taken in the
03: matter of In Re: Pacific Fertility Center
04: Litigation. Today's date is January 14th, 2020.
05: The time on the record is 9:35 a.m. My name is
06: Brandyon Brantley. I'm the videographer. The court
07: reporter is Laura MacKay.

Page 00006

25: Q. Mr. Junnier, we just met, but for the sake

(continued page 00007)

0007

01: of the record, do you mind stating your full name
02: for the record.
03: A. Yes. It's just Justin Edward Junnier.

Plaintiffs Objections 402 relevance; 403 waste of time:

04: Q. Great. So have you ever been deposed
05: before?
06: A. No, ma'am.

Page 00013

09: Q. Great. So we're going to start, and I
10: would just like to get an idea of your educational
11: background.
12: A. Okay.
13: Q. Okay? So what's the highest degree that
14: you received?
15: A. My BS in biology.
16: Q. Okay. And where was that?
17: A. University of Georgia.
18: Q. Okay. And what year did you graduate?
19: A. 2012.

Page 00013

23: Q. Okay. And can you give me an overview of
24: your job history, starting from graduation to the
25: present.

(continued page 00014)

0014

01: A. Okay. So shortly after I graduated, I was
02: basically the 1-800 number on the back of the box of
03: Frontline --
04: Q. Okay.
05: A. -- receiving phone calls in regards to
06: Frontline not working, so on and so forth. And then
07: I went to WuXi AppTec, where I became a lab
08: technician. Did that for a couple of years and then
09: became an environmental lab technician, where I
10: traveled around doing viable air sampling,
11: environmental monitoring of water as well. Then
12: became a quality investigator, was the last position
13: that I had at WuXi. And that's what gave me a
14: little bit more insight as when I went to Chart. It
15: gave me the experience to become a field service
16: engineer at Chart. And then now I am a quality
17: engineer with CAIRE.

18: Q. Okay. And when did you start with Chart?

19: A. September 2016.

20: Q. And you are now working at a separate
21: company called CAIRE?

22: A. Yes. It was a subsidiary of Chart. We
23: have now been purchased by another company, but it
24: was under the umbrella of Chart.

Plaintiffs Objections 402 relevance :

25: Q. Okay. And when did that change? When did

(continued page 00015)

0015

01: that shift?

02: A. Last year, right around this exact time.

03: Q. Okay. So roughly January?

04: A. Yeah, December, January.

05: Q. Okay. Okay. And do you still do -- in

06: your work at CAIRE, do you still do work for Chart?

07: Do you still answer questions?

08: A. No, ma'am.

09: Q. No?

10: A. Uh-uh.

11: Q. Okay. All right. So concentrating on your

12: time at Chart --

13: A. Uh-huh.

14: Q. -- can you tell me a little bit more about

15: what your responsibilities were in your role as a

16: field service engineer.

17: A. Yes, ma'am. So the main thing, when I was

18: there in the office on a day-to-day basis, was

19: answering emails, answering phone calls from our

20: different clients in regards to concentrators and

21: freezers, if there was any kind of part number

22: inquiries, to troubleshooting a freezer, helping set

23: up a freezer over the phone, setting up the person's

24: concentrator over the phone.

25: Also working on side projects, testing.

(continued page 00016)

0016

01: And also a big part it, we were also trainers, and

02: so we would have training for our distributors,
03: especially for my job. I would lead freezer
04: schools. I would help teach our distributors how to
05: troubleshoot freezers. New products that were
06: coming out, I would train them on that. Train them
07: on how to set up a freezer, because then that
08: distributor would then teach our end users.

09: Q. Okay. And did you ever have direct contact
10: with end users or was it always more with
11: distributors?

12: A. It was a mixture of both. We would -- but
13: we would explain to the end user, if we were working
14: with them, that they would have to contact their
15: distributor for any kind of training or anything
16: else, to order parts or anything like that, since we
17: do not work directly with end users. But, yes, I
18: have spoken to quite a few end users.

19: Q. Okay. And would you ever give distributor
20: instructions to pass on to an end user?

21: A. Yes, I would. And I would say but first
22: you need to contact your distributor.

23: Q. Right. No, I'm saying, when you are
24: speaking with a distributor, would you ever give
25: that distributor instructions for them to pass on to

(continued page 00017)

0017

01: a specific customer or generally to pass on to
02: customers?

03: A. Yes, ma'am. Sorry for the
04: misunderstanding.

05: Q. Okay. No, no problem.

06: And did you -- were you also -- I have -- I
07: did look at your LinkedIn, and I have that you are
08: biomedical quality engineer from May 2018.
09: A. Yes.
10: Q. So is that also a position that you held at
11: Chart?
12: A. This is -- yes, ma'am. That's the quality
13: engineering position I'm in now.
14: Q. Okay. So field service engineer and
15: quality engineer. Can you tell me a little bit
16: about the differences between those two roles.
17: A. Yes, ma'am. So the big difference between
18: those two, field service engineering is most on the
19: post-market side. I dealt with the customers. And
20: quality engineering, I'm in the manufacturing side.
21: So I'm always doing continuous improvements,
22: improving our processes, cleaning up waste, making
23: our processes better so we continue building quality
24: product.
25: Q. Okay. And do those two -- do the people in

(continued page 00018)

0018

01: those two roles, then, work with each other?
02: A. Occasionally, yes, ma'am.
03: Q. Yeah? If there are problems with a
04: product, would the field service engineer then
05: report that to the quality engineer in some way?
06: A. Yes, ma'am. You're absolutely right.

Page 00018

09: Q. Okay. And let's just talk about who else
10: you were working with.

11: A. Uh-huh.

12: Q. When you were a field -- and again, let me
13: just make sure I have this right.

14: You were -- from September 2016 to May 2018
15: is when you were a field service engineer?

16: A. Yes, ma'am.

17: Q. Okay. And who did you report to during
18: that time?

19: A. Brendon Wade.

20: Q. Brendon Wade. And what's Mr. Wade's role?

21: A. He is a tech service manager.

Plaintiffs Objections 402 relevance; 403 waste of time :

22: Q. Okay. And do you know who his direct
23: report was?

24: A. That bounced around a little bit. But as
25: of the tail end of it, it was Miguel Servantes.

(continued page 00019)

0019

01: Q. Okay. And did you have anyone working
02: beneath you when you were a field service engineer?

03: A. No, ma'am.

04: Q. Okay. And were there other field service
05: engineers that you typically worked with?

06: A. Yes, ma'am.

07: Q. Okay. Who would that be?

08: A. At the time, Matthew Barth. He's no longer
09: with us. Joy Sandman, Shane Dockery, and that was
10: it.

11: Q. Okay. And is there anybody else that you
12: worked with frequently or, you know, regularly while
13: you were working as a field service engineer?

14: A. Yes, ma'am.

15: Q. Within Chart I should say.

16: A. Yes, ma'am. Ramon Gonzalez.

17: Q. And what's his role in connection to what

18: you were doing?

19: A. He was -- essentially he was the product

20: manager, but he was the technical specialist, if you

21: will.

22: Q. Okay. And so how does he sort of fit into

23: the hierarchy?

24: A. He was on the marketing side of it, but

25: he's above Brendon.

(continued page 00020)

0020

Plaintiffs Objections 402 relevance; 403 waste of time :

01: Q. Okay. Got it. Anybody else?

02: A. Yes. Bruce Edel, Kevin Gilliland. Those

03: are two sales reps.

04: Q. Okay.

05: A. Buzz, Buzz Bies, and a number -- Jeff

06: Brooks.

07: Q. Okay.

08: A. A number of engineers.

09: Q. Great. And when you were the biomedical

10: quality engineer, who did you report to in that

11: role?

12: A. Then again, my management has been bounced

13: around a little bit, but when I first started it was

14: Kip Brewer.

15: Q. Okay.

16: A. Now I'm on to -- Kip is now a colleague of

17: mine, and now it's Mike Tucker.

18: Q. Okay. And Mike Tucker, has that been since

19: the --

20: A. The diversion, yes, ma'am. Yeah, he's only

21: been here for maybe eight months.

22: Q. Okay. So for the time you were at Chart,

23: then --

24: A. Seven to eight months. I can't really --

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Plaintiffs Objections 402 relevance; 403 waste of time :

17: Q. Sorry. All right. So you were saying

18: that -- we were talking about your superior, direct

19: superior, when you were the quality engineer.

20: A. Yes.

21: Q. And I believe you said that was Kip Brewer;

22: is that right?

23: A. Yes, ma'am, it was Kip Brewer, and now it's

24: on to Mike Tucker.

25: Q. Okay. And did you have anybody else that

(continued page 00022)

0022

01: you reported to in that role?

02: A. Chris Lynch, who is my director.

03: Q. Okay. Anyone else?

04: A. Occasionally Edward Kim.

05: Q. Edward Kim. And what's his role in

06: connection?

07: A. VP of engineering.

08: Q. And is there -- are there any other quality

09: engineers that you worked with during that time

10: period when you were at Chart?

11: A. No, ma'am.

12: Q. No. Okay. And was there anybody that

13: reported to you?

14: A. Yes, ma'am.

15: Q. Who was that?

16: A. Erica Court and Mia Hilliard.

17: Q. Okay. And what are their roles?

18: A. They are quality technicians.

19: Q. Okay. And what do they do?

20: A. A number of things, from x-raying our welds

21: to calibrating our equipment, mechanical testing,

22: any other kind of nondestructive testing, generating

23: NCRs, incoming inspection. A number of things.

24: Q. Okay. And what's an NCR?

25: A. Oh, excuse me. Nonconforming report.

(continued page 00023)

0023

01: Q. Okay.

02: A. Or conformance report.

03: Q. Great. And -- all right. So I think we're

04: going to skip on and get a little bit more into what

05: you were doing. And for the next, you know, number

06: of questions, I'm going to be limiting my questions

07: to the time that you were at Chart.

08: A. Okay.

09: Q. But I'm not necessarily differentiating

10: between your roles. Okay?

11: A. Yes, ma'am.

12: Q. All right. So are you familiar with

13: Chart's stainless steel line of freezers?

14: A. Yes, ma'am.

15: Q. Okay. And what involvement did you have

16: with the stainless steel line in your job?

17: A. It was a mixture -- like I said, it was
18: mixture between concentrators and freezers. So I --
19: on the team I was kind of the go-to freezer guy, if
20: you will, and would be the guy to answer a lot of
21: the questions for clients, also work on technical
22: manuals, and help with any kind of testing on the
23: side.
24: Q. Okay. And what sorts of questions did you
25: typically get about the stainless steel line?

(continued page 00024)

0024

01: A. Yes, ma'am. So it would be part inquiries.
02: It would be troubleshooting. Any kind of technical
03: support. That may be setting up new freezers.

Page 00026

10: Q. How many field service engineers were there
11: while you were there?

12: A. At the max, at one time there were five,
13: but usually about three.

Plaintiffs Objections 602 speculation:

14: Q. Okay. All right. And for the ones that
15: were reporting to you, did anyone investigate the
16: reason for the failure?

17: A. I didn't have any field service engineers
18: reporting to me directly. But my coworkers, there
19: were the occasional time that there was people
20: reporting that there was a vacuum loss. It ended up
21: being pressure too high, the LN2 going in too high,
22: the pressure, and it was evaporating too quickly,
23: and it would throw up the usage alarm. So it ended
24: up being end-user error the majority of the time.

25: Q. Okay. How did you -- how did you come to

(continued page 00027)

0027

01: those conclusions?

02: A. Asking the questions, hey, what is your

03: source pressure at your LN2 tank outside or wherever

04: it may be? And I would ask for maybe a download at

05: the TEC3000, and kind of go through each data point

06: to determine whether or not, okay, is it a vacuum

07: issue or are we having a -- if there's something

08: else going on. Also ask about the preventative

09: maintenance, if they're keeping up with that.

10: I'm trying to think if there is really

11: anything else. If you see any kind of sweating or

12: ice buildup around the outside of the tank, that

13: would be a good indicator of a vacuum failure.

14: Q. Okay. What about condensation under the

15: tank? Is that an indicator of a vacuum failure?

16: MR. SMITH: Incomplete hypothetical.

17: A. It -- it can be, but not really. If -- if

18: the -- there's a lot of moisture in the ambient air,

19: and you will have some venting of the LN2. Once it

20: evaporates, it will build condensation, and it will

21: drip --

22: Q. Okay.

23: A. -- on the outside of the tank.

24: Q. So there's oftentimes condensation around a

25: tank regardless?

(continued page 00028)

0028

01: A. Yes, ma'am. There are times that there

02: could be, yes, ma'am.

03: Q. Okay. Is that -- is that the normal

04: occurrence?

05: A. It can be, yes, ma'am, depending upon

06: how -- how the humidity is in that room.

07: Q. Okay. And if -- so what -- what I'm

08: getting from what you are saying is that you were

09: the one who more or less investigated these tank --

10: these reported tank failures; is that correct?

11: MR. SMITH: Misstates testimony.

12: A. No, not necessarily investigate. I would

13: help troubleshoot the freezers that ever did come

14: back to us. They would come in on an RMA. And our

15: production team would then investigate that and come

16: up to a -- come up to a root cause.

Page 00028

18: Q. Okay. And did that happen every single

19: time that they sent -- sorry. Let me restate that.

20: In every case where a vacuum failure was

21: reported, would the end user then send the tank back

22: to Chart to be investigated?

23: A. No, ma'am. A lot of times they're so

24: massive and a lot of times they were so old that

25: they would just get rid of them --

(continued page 00029)

0029

01: Q. Okay.

02: A. --- and purchase a new one.

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*Defense Objections MIL No. 1 -- dissimiilar alleged other occurrence;
FRE 403:*

05: Q. Did you -- as a field service engineer, did

06: you ever travel to customer sites to repair or
07: evaluate Chart stainless steel freezers?
08: MR. SMITH: Compound.
09: A. Yes, ma'am.
10: BY MS. COWAN:
11: Q. Yes? Was that to repair or evaluate?
12: A. Both.
13: Q. Both? Okay. And would you ever travel to
14: an end-user site if there was not a report of a
15: malfunction?
16: MR. SMITH: Vague. Sorry. Vague.
17: A. No, ma'am.
18: BY MS. COWAN:
19: Q. Okay. So typically, when you went to
20: end-user sites, it was because they were
21: experiencing some problem; is that correct?
22: A. Yes, ma'am.
23: Q. Okay. And did you -- do you remember being
24: asked to repair or evaluate any stainless steel
25: freezers on your visits to end users?

(continued page 00030)

0030

01: A. Yes, ma'am.
02: Q. Okay. How many times?
03: A. Two visits that I went to. I went to New
04: York and I went to the CDC.
05: Q. Okay. Can you tell me about the New York
06: visit first. When was that?
07: A. Oh, man, I can't. I believe it was
08: around -- no, I can't remember the year. It was
09: March -- I think it was March 2017, if I remember
10: correctly.

11: Q. Okay. And what occasioned that visit?
12: A. There were some issues with the freezer in
13: regard -- potentially issues with two places.
14: Actually, three places. There was a fertility
15: clinic at Cornell University, and the other place I
16: can't -- I think it was another part of the
17: hospital, but I can't really remember what it was.
18: There was two distributors that I went -- that I
19: went and saw. There was three locations.
20: We believe that there were some issues in
21: regards to electrical interference, and I replaced
22: the controllers on the couple of those freezers and
23: added some ferrites with my belief that maybe that
24: would help with the interference issue.

Defense Counters Contingent on whether 29:5 - 30:24 is admitted:

25: Q. Okay. And what led you -- well, first of

(continued page 00031)

0031

01: all, you said you visited with two different
02: distributors?
03: A. Yes, ma'am.
04: Q. Okay. Who were the distributors?
05: A. One was LabRepCo and the other one was Tech
06: Air.

Defense Objections MIL No. 1 -- dissimiilar alleged other occurrence; FRE 403:

07: Q. Okay. And you remember going to two
08: different sites or three different sites?
09: A. There was -- there's two locations.
10: There's two distributors. There's two locations,
11: but there was -- I went to two different places in
12: one, if that makes sense. Like, I was in two
13: different floors and saw -- saw a different
14: department.

15: Q. Okay.

16: A. Yeah.

17: Q. All right. And one of those was Cornell.

18: It was an IVF --

19: A. Yes, ma'am.

20: Q. -- facility?

21: A. Yeah.

22: Q. And what did they have in the freezer that

23: you --

24: A. That, I can't really remember. I know it

25: was -- it was a fertility clinic or it was the

(continued page 00032)

0032

01: fertility department at the hospital, but I didn't

02: ask what was really in there.

03: Q. Okay.

04: A. I never went into the freezer. I dealt

05: with the plumbing and the TEC3000.

06: Q. Okay. And the TEC3000 is the controller?

07: A. Yes, ma'am.

08: Q. All right. And to your knowledge, is the

09: TEC3000 -- was that also the same controller that

10: was on the other site that you went to?

11: A. Yes.

*Plaintiffs Objections 402 relevance; 403 waste of time :
Defense Counters Congtingent on wether other occurrence at Cornell
admitted -- electrical interference issue discussed:*

12: Q. Okay. And you said that you believe

13: that -- sorry. Did anybody go with you from Chart?

14: A. No, just me.

15: Q. Okay. And did you report back to anyone on

16: this trip?

17: A. Yes, ma'am.

18: Q. Who did you report to?

19: A. Brendon.

20: Q. Brendon Wade?
21: A. Yes, ma'am.
22: Q. Okay. Anybody else?
23: A. Yes. Definitely would have been the sales
24: rep at the time, which was Bruce Edel, and maybe in
25: passing Ramon.

(continued page 00033)

0033

01: Q. Okay. Ramon Gonzalez?
02: A. Yes, ma'am.
03: Q. Okay. And you said that you believed the
04: problem to be electrical interference?
05: A. Yes, ma'am.
06: Q. You believed it to be the same problem with
07: both -- with all of the controllers that you saw?
08: A. Yes, ma'am.
09: Q. How many controllers were affected?
10: A. If I remember correctly, there were two
11: that I ended up replacing.

*Defense Counters Congtinget on wether other occurrence at Cornell
admitted -- electrical interference issue discussed:*

12: Q. Okay. And you didn't see any other
13: problems with the other controllers?
14: A. No.
15: Q. Okay. And what led you to believe that
16: there was electrical interference with the
17: controller?
18: A. At the hospital, at the time, they were
19: under construction. There was a lot of exposed
20: wiring. And also, in the -- in that department,
21: just above them was the helipad. And so you have
22: the radio frequencies coming from the helicopter.
23: They have the tower just above them.
24: And so my thought was, okay, all of this
25: interference, electrical interference, may be coming

(continued page 00034)

0034

01: from any of the exposed wiring, the helicopter --

02: THE COURT REPORTER: Slow down.

03: A. My apologies.

04: Coming from any of those locations. And

05: also, New York is very old infrastructure, and maybe

06: from the power lines.

07: BY MS. COWAN:

08: Q. Okay. And was there anything before you

09: headed out -- before you went and saw the site, was

10: there any reason that you had to believe that

11: electrical interference might be an issue with the

12: TEC3000?

13: A. Yes, ma'am.

14: Q. What -- can you describe that, please.

15: A. Then again, that was a couple years ago,

16: but I may have asked them to look at the freezer

17: themselves, press the up and the down arrow at the

18: same time. It will get into a back door menu. It

19: will display the serial number and will say serial

20: number equals zero and -- yeah.

21: Q. Okay. And the serial number equalling

22: zero, was that an indicator of something to you?

23: A. Yeah, potentially. Then again, we still

24: don't, truly -- I don't since I've left the company,

25: but I still don't -- at the time we didn't know that

(continued page 00035)

0035

01: truly was the root cause of the electrical

02: interference.

03: Q. Okay. So I'm just not quite following you.

04: The serial number equalling zero is the cause of the
05: electrical interference or is that just the symptom
06: of the --

07: A. It's a symptom. Excuse me.

08: Q. Okay. And is that something -- the serial
09: number equalling zero and there being potential
10: electrical interference issues, is that something
11: you had seen elsewhere affecting TEC3000s besides
12: these two sites?

13: A. Yes, ma'am.

Page 00035

23: Q. Okay. And did you ever -- so you said
24: there were two different visits that you made. So
25: as to the Cornell, I want to finish that up. You

(continued page 00036)

0036

01: said you replaced two controllers.

02: Did that resolve the problem?

03: A. At Cornell, it fixed it when I was there.

04: I left that freezer making sure that was up to par

05: and everything was working correctly. And then a

06: couple of months later we get the phone call again

07: that the same thing happened again.

08: Q. Okay. So --

09: A. I believe in May.

10: Q. All right. So the two things that you had

11: said you did, you applied ferrites and you replaced

12: the controllers, correct?

13: A. Yes, ma'am. And one particular freezer I

14: replaced a valve.

15: Q. Okay. What valve?

16: A. It was the feed valve, the intake valve.

17: It was a little low on the ohms, the resistance

18: reading.

Plaintiffs Objections 402 relevance; 403 waste of time and confusion of issues :

19: Q. Okay. Can you explain that a little bit in

20: laymen's terms for me?

21: A. Yes, ma'am. So essentially, when the

22: resistance starts to lower, if you will -- there's a

23: plunger inside, and if it -- it actually -- there's

24: a coil, and then when -- that plunger is basically

25: metal, and so it's magnetized. So once that is

(continued page 00037)

0037

01: engaged, that plunger will lift up. And if it

02: doesn't have enough resistance, it won't lift that

03: plunger up enough and allow liquid nitrogen to go

04: through.

05: Q. Okay. And where is that valve in relation

06: to the tank? Where is it?

07: A. It's outside.

08: Q. It's outside?

09: A. Uh-huh.

10: Q. And is it -- you said it was the feed

11: valve? Is that where the LN2 goes in?

12: A. Yes, ma'am.

13: Q. Okay. And so is that something that you

14: just noticed visually could be a problem?

15: A. No, ma'am. I asked when was the last time

16: they did the preventative maintenance. From my

17: recollection, they didn't remember when was the last

18: time they did it. So I decided to check on the

19: preventative maintenance for them, and there just

20: that -- one of the feed valves was slightly on the
21: low side. So we recommend, if I remember
22: correctly -- it's been a couple of years now since I
23: even looked at a freezer. It was on a two-year
24: basis that you would swap out the valves.
25: Q. Okay. But they had another tank; is that

(continued page 00038)

0038

01: correct?
02: A. It was with a different distributor, and
03: that was -- but LabRepCo, I went and saw this one
04: department, and then I went to a fertility clinic
05: after that. So there was one freezer there with
06: LabRepCo. Then I went to -- I forget. Some
07: fertility clinic eight blocks up the road for --
08: AS -- ASM. I forget what it was, but it was still
09: with LabRepCo.
10: Q. Okay.
11: A. So there was two -- there was two freezers
12: at LabRepCo and one freezer-ish with -- with Tech
13: Air.
14: Q. Okay. And so you visited two fertility
15: clinics during that trip?
16: A. Yes.
17: Q. Okay. And it sounds like you saw at least
18: three tanks.
19: A. Yes.
20: Q. Okay. At Cornell, did you replace all of
21: the controllers on the tanks that you saw?
22: A. Just the one -- one with LabRepCo, yes, I
23: just replaced that one controller.

24: Q. Okay. Did they have other tanks there?

25: A. I only saw the one.

Page 00039

16: Q. So at the second location, how many -- how

17: many tanks did you see?

18: A. There were two freezers.

19: Q. Okay. And so did you replace a controller

20: at that second location?

21: A. On one I did, yes.

22: Q. Okay. You didn't see any problems with the

23: other controller?

24: A. No, ma'am.

25: Q. Do you have an understanding from your

(continued page 00040)

0040

01: experience as to why electrical interference would

02: only affect one controller if they're in the same

03: location?

04: A. It would all be kind of circumstantial, if

05: you will. Electrical interference may just be able

06: to hit a random wire like this, for instance, and

07: just -- there's no protection on this microphone

08: right here. And so if electrical interference hits

09: this, it's all circumstantial and could damage that

10: piece of equipment.

11: Q. All right. And so if you replace the

12: controller, why -- why would the new controller in

13: the same location not experience interference, for

14: example?

15: A. We install ferrites to help better protect

16: that.

17: Q. And what's -- tell me the purpose of the
18: ferrites.
19: A. Ferrites essentially is just a lead ball,
20: if you will, and it drowns out any of that
21: interference and protects the cabling and the system
22: itself.

23: Q. Okay. And then at the second fertility
24: clinic that you went to, did they have multiple
25: tanks?

(continued page 00041)

0041

01: A. Yes, ma'am. They had two.
02: Q. They had two tanks. And you replaced the
03: controller on one of those?
04: A. Yes, ma'am.
05: Q. Okay. Are you aware if that fixed the
06: problem?
07: A. I have not heard anything back, so I'm
08: expecting no news is good news.
09: Q. Okay. Did you install ferrites there as
10: well?
11: A. Yes, ma'am.

Plaintiffs Objections 402 relevance; 403 confuses the issues and waste of time:

12: Q. Okay. You said you went on another trip.
13: To the CDC?
14: A. Yes, ma'am.
15: Q. When was that?
16: A. Oh, to be honest with you, I can't remember
17: the true date. It was towards the tail end of me
18: working as a field service engineer.
19: Q. So --

20: A. Maybe around March, April-ish of 2018.
21: Q. Okay. And what prompted that trip?
22: A. I got a call from a sales rep stating that
23: they could not install their -- they had a -- a
24: locking mechanism that was triggered by a retina
25: scan.

(continued page 00042)

0042

01: Q. Uh-huh.
02: A. And we -- we built a special freezer for
03: the CDC, and it was a port that was welded on
04: backwards, and they couldn't screw the threads into
05: the retina scanner.
06: Q. Okay. So totally different problems than
07: the issues that you saw in your New York trip.
08: A. Yes, ma'am.

Page 00042

*Defense Objections MIL No. 1 -- dissimiilar alleged other occurrence;
FRE 403:*

18: Q. Sorry. I think you testified that about
19: 80 percent of the time when you were in the field
20: service role, you were dealing with customer
21: questions or complaints or issues; is that correct?
22: A. Yes, ma'am.
23: Q. Okay. So not every time that you received
24: a customer complaint did you go and visit the site.
25: A. No, ma'am. Our main priority is to help

(continued page 00043)

0043

01: them over the phone.
02: Q. So why -- what was the difference for the
03: New York trip, what prompted that, as opposed to
04: just trying to troubleshoot over to phone?

05: A. I think it was the -- just trying to keep
06: customer satisfaction. That customer was really
07: angry at the time. As a company, as a whole, we
08: decided as a business decision that we would go out
09: there to see them.

10: Q. What -- why were they angry?

11: A. Just because --

12: MR. SMITH: Calls for speculation.

13: BY MS. COWAN:

14: Q. Did they tell you why they were angry?

15: A. Just because they believed the freezer was
16: malfunctioning multiple times.

17: BY MS. COWAN:

18: Q. Okay. Do you recall how frequently their
19: freezer was malfunctioning?

20: A. For specifically the LabRepCo incident, the
21: one at Cornell University, it ended up being three
22: times.

Page 00044

11: Q. Have you ever encountered -- do you
12: remember any issues in which a stainless steel Chart
13: tank manufactured, and it was later found that it
14: had any weld failures?

15: A. Yes.

16: Q. How many occasions?

17: A. Seldom. Within the year and nine months I
18: was a field service engineer, one, two.

Plaintiffs Objections 403 confuses the issues :

19: Q. Okay. Can you tell me what you recall
20: about those incidents.

21: A. One was the CDC welding that -- that port
22: on backwards. And the other one, the turntable on

23: the inside, that wasn't -- I believe, if I'm not
24: mistaken, that gets screwed on and it gets a tack
25: weld. And we had one of those that I can remember.

(continued page 00045)

0045

01: Q. Okay. And what -- what was the effect of
02: that weld failure?
03: A. The turn tray would just drop into the
04: bottom of the freezer, and you can't spin it.
05: Q. Okay. Do you remember any other issues
06: with weld failures that affected the stainless steel
07: line?
08: A. Not to my knowledge, no.

Plaintiffs Designation End with "older":

09: Q. Okay. Do you remember any issues in which
10: a Chart tanks, a stainless steel tank, had a crack?
11: A. Yes, but they were all older and out of

Plaintiffs Designation Start with "And":

Defense Counters plaintiffs' designation is missing "and our of warranty". Need this for context and to complete the sentence.:

12: warranty. And then again, like older than me, 30,
13: 35 years old.

Page 00046

Defense Objections Objection -- Plaintiffs' dismissed their failure to warn claim; any criticism of the product's manual is unduly prejudicial, confusing and not relevant to any remaning claim; FRE 403:

04: Did you help write the technical manual for
05: the TEC3000?
06: A. I revised it, yes, ma'am, a number of
07: times.
08: Q. Okay. Did you -- do you recall that there
09: was a section in that technical manual about
10: electrical interference?
11: A. No, ma'am.
12: Q. Why not?

13: A. Because we still truly -- at the time that
14: I was working there, still truly did not know the
15: root cause of what was causing this electrical
16: interference and did not have -- and to my
17: knowledge, didn't have a proper fix for it. So we
18: didn't want to add something to a technical manual
19: that may or may not have been the right fix.

20: Q. Okay. You said that, as a field service
21: engineer, you led cryobiological service schools for
22: customers.

23: A. Uh-huh.

24: Q. Did you ever teach a program that covered
25: any aspect of the 808 MVE line?

(continued page 00047)

0047

01: A. Specifically, no. But as a whole, yes, we
02: did cover it.

03: Q. Okay. And those -- again, those programs
04: were solely to distributors?

05: A. Yes, ma'am.

Defense Objections Objection to 47:18-48:22 -- Plaintiffs' dismissed their failure to warn claim; any criticism of the product's manual is irrelevant, confusing and not relevant to any remaning claim; FRE 403:

06: Q. Okay. And did you ever teach a program
07: that covered the TEC3000 controller?

08: A. Yes, ma'am.

09: Q. During that -- how many times did you teach
10: a school about the TEC3000?

11: A. At least three or four times.

12: Q. Three or four times. And those were to
13: distributors as well?

14: A. Occasionally they were for internal new
15: hires that we wanted to give product knowledge to.

16: And then -- yeah, then the majority of the time it

17: was with distributors, yes, ma'am.

18: Q. Did you or anyone else ever mention

19: electrical interference during those sessions?

20: A. Yes and no. A lot of times it was off line

21: because we still didn't know the true root cause and

22: didn't want to teach anyone something that may or

23: may not fix the issue.

24: Q. Okay. But did you ever tell anyone or any

25: of your distributors that that was a concern?

(continued page 00048)

0048

01: A. Yes, because they would bring it to our

02: attention: Hey, we've this. What's a good fix for

03: this? Hey -- and I would say, hey, we're still

04: working on this, trying to figure out that, hey,

05: here's some part numbers to the ferrites. Give this

06: a shot.

07: Q. Okay. And so, if I'm understanding you

08: correctly, distributors would come to you when their

09: end users are having problems --

10: A. Yes, ma'am.

11: Q. -- potentially with the TEC3000?

12: A. Yes, ma'am.

13: Q. And you would then give them potential

14: solutions that you thought might help --

15: A. Yes, ma'am.

16: Q. -- is that right?

17: A. Yes, ma'am.

18: Q. Did you ever notify any of your

19: distributors about there being electrical

20: interference problems without them coming to you

21: already with a problem?

22: A. No, ma'am.

Page 00049

Defense Objections Chart's objection to Trial Exhibit 219 was overruled by the Court (objection preserved):

02: Q. Okay. All right. I'm going to mark as
03: Exhibit 124 a document produced by Chart, starting
04: with Bates CHART 20048.
05: A. Thank you.
06: Q. Okay. So this is an email thread, and like
07: most email threads, the beginning of it is at the
08: end of the document.
09: A. Yes, ma'am.
10: Q. So I would like to start with the last
11: email in the thread. And this is from you to
12: Jonathan Emerson --
13: A. Yes, ma'am.
14: Q. -- at LabRepCo.
15: A. Uh-huh.
16: Q. And this is on March 22nd, 2017. Do you
17: recall sending this email?
18: A. Just looking at this just now, yes, ma'am.
19: Q. Okay. And did you send this in your role
20: at Chart, as part of your duties at Chart?
21: A. Yes, ma'am.
22: Q. Yes. Okay. And who is -- who is
23: Mr. Emerson?
24: A. He is a sales rep for that area.
25: Q. Okay. And he sells Chart tanks and other

(continued page 00050)

0050

01: products, then?
02: A. Yes, ma'am.
Plaintiffs Objections 403 waste of time :
03: Q. Okay. And what area is that?
04: A. That was the New York area. I don't really

05: know his territory.

06: Q. All right. And sounds like you are talking

07: about going to New York traveling for work.

08: Is this email about that trip that we

09: already discussed?

10: A. Yes. I was actually already going there to

11: see Tech Air, the other distributor, and then this

12: happened. And so to knock two birds out with one

13: stone, I would just knock out both distributors.

14: Q. Okay. So let's skip up to Mr. Emerson's

15: email to you on the 16th on page 20050. You'll see

16: it has that picture there.

17: A. Yes, ma'am.

18: Q. And this is -- this is after your trip,

19: correct?

20: A. Yes, ma'am. It's about roughly two months

21: later.

22: Q. Okay. And what was -- what did you gather

23: from his email?

Page 00051

Defense Objections Chart's objection to Trial Exhibit 219 was overruled by the Court (objection preserved):

01: Q. What did you understand the purpose of his

02: email?

03: A. Now with this photo here, essentially we're

04: having the same issue again. The serial number

05: equals zero, and potentially the ferrites did not

06: work.

07: Q. Okay. And what did you advise Mr. Emerson

08: to do next?

09: A. If I remember correctly from this email, I

10: believe we replaced it again for customer

11: satisfaction.

12: Q. Okay. And was there any other fix to try

13: and make sure that the second -- now second
14: replacement would not experience the same issue?
15: A. I believe I asked them to double up on the
16: ferrites to see if that helped.

*Defense Objections Chart's objection to Trial Exhibit 219 was
overruled by the Court (objection preserved):*

17: Q. Okay. And he is mentioning -- we've talked
18: a number of times about the serial number equalling
19: zero.
20: What are the -- are there any other
21: symptoms of electrical interference on a TEC3000?
22: A. Yes, ma'am.
23: MR. SMITH: I object. That assumes facts
24: in that the serial number equals zero equals
25: electrical interference.

(continued page 00052)

0052

01: MS. COWAN: Sure.
02: A. We believed at the time that there could be
03: some correlation with levels fluctuating and the
04: temp -- the temperature readings to be off.
05: BY MS. COWAN:
06: Q. Okay. So the temperature reading being
07: off, level readings being off, and serial number
08: equals zero, am I correct that those are all
09: symptoms of electrical interference?
10: A. Yes, ma'am.
11: Q. Okay. What is the problem with having
12: electrical interference?
13: How does it -- how does it impact the end
14: user's ability to use the controller, from your
15: understanding?
16: A. There are times where they may not even see
17: an issue ever, and then there times like this, where

18: it may cause the levels to be reading low when there
19: actually is enough LN2 in the freezer. And also,
20: the end user will not be able to get a significant
21: or a true temperature reading because it will be
22: reading minus 273, when in the reality it would
23: either be around 180 to 196 depending on the
24: location of those temperature probes.
25: Q. Okay. And so how does that affect the tank

(continued page 00053)

0053

01: itself?
02: A. It really doesn't. Essentially the TEC3000
03: is the brains of the operation, but you can still
04: use that freezer without that controller.
05: Q. Okay. But you can't -- you can't use the
06: controller itself to get a reading on the
07: temperature, correct?
08: A. You can if you had a third party
09: thermocoupler or temperature probe to stick in
10: there.
11: Q. Right. So what I asked was you can't use
12: the controller to get that reading, correct?
13: A. Correct, yes, ma'am.
14: Q. And does the controller do anything else
15: besides just tell you what the temperatures are?
16: A. Since it's the brains of the operation, if
17: you have autofill set up, and you have an external
18: LN2 storage tank, you can fill with that, but you
19: don't necessarily have to have it to do so.
20: Q. Okay. And so the autofill function would
21: be interfered with if it's having this issue
22: potentially.
23: MR. SMITH: Assumes facts.

24: BY MS. COWAN:

25: Q. Is that correct?

(continued page 00054)

0054

01: A. It can if the readings -- if the TEC3000 is

02: reading low, it's going to constantly and try to

03: fill.

04: Q. If it's reading a low LN2?

05: A. Yes, ma'am.

06: Q. Okay. Are there -- I see that this -- in

07: his email, Mr. Emerson says, "The unit is alarming

08: for Low Level."

09: What's your understanding of that sentence?

10: A. That, like I was mentioning a moment ago,

11: you would see levels that were off and that the

12: level -- low level -- LL stands for low level, and

13: the TEC3000 is thinking that it's below its low

14: level set point.

15: Q. And so the TEC3000 sets off an alarm at

16: that point?

17: A. Yes, ma'am.

18: Q. Okay. And what -- what would the customer

19: have to do to get that alarm to stop?

20: A. There were a couple of things that you

21: could try to do to fix the symptoms. You could

22: restore the -- first of all, you can try to power

23: cycle it, turning it on, turning it back off. You

24: can -- if that doesn't help the issue, you can

25: restore the defaults, factory defaults. Some of the

(continued page 00055)

0055

01: times that would actually fix the issue, but the

02: majority of the time we ended up just replacing the

03: controller for customer satisfaction.

04: Q. Okay. And in the meantime, you know, if

05: they're waiting on a replacement, what -- what do

06: they do to -- I mean, I assume that they don't just

07: have an alarm going off as we had here for, you

08: know, however many days or weeks it might take to

09: replace the controller.

10: What would they do to deal with that issue

11: in the meantime?

Page 00055

Plaintiffs Objections 403 prejudicial; 701 improper opinion of lay witness:

16: A. Okay. So what's really good about our MVE

17: products -- I know I'm getting kind a little off

18: kilter here, but I'll come right back to it. So MVE

19: is Security through Systems.

Page 00055

Defense Objections See objection above; Also objection to argumentative attorney colloquy 55:4-55:11; incomplete hypothetical; missing the answer provided on 55:16-19.:

24: So with Security through Systems, our

25: freezers can -- if there ever is something

(continued page 00056)

0056

01: legitimately malfunctioning, our freezers can

02: sustained LN2 for a lengthy amount of time. It

03: could be two weeks, three weeks. And so that's kind

04: of where I was getting at, is that there is security

05: with their samples.

Page 00056

08: Q. I'm asking you just about the alarm. What

09: would they have to do about that alarm so that it's

10: not going off for days or weeks --

11: A. Oh, alarm mute.

12: Q. Okay. So do you have any knowledge that

13: customers did mute their alarms when they were
14: experiencing this issue?
15: A. Yes, ma'am.

Page 00056

18: All right. So the next email in this
19: thread is from Brendon Wade to you and a number of
20: people. I believe we've covered a lot of these.
21: But who is Michael Eck?
22: A. I do not know.
23: Q. Okay. Do you know who Richard Leboff is?
24: A. Yes, ma'am.
25: Q. What's his role?

(continued page 00057)

0057

01: A. Electrical engineering.
02: Q. Okay. And who is Greg Mueller?
03: A. He was a contact at Extron. I don't know
04: his specific role.
05: Q. Okay. And who is Daphne Thomas?
06: A. She was a quality analyst at the time. She
07: no longer works with the company.
08: Q. Okay. And he says, "Hi Michael. I
09: appreciate you sending us those failure reports on
10: TEC3000's. Have the people evaluating these been
11: able to find a common mode of failure for the units
12: that have the SN=0?"
13: A. What page are you on? I'm sorry.
14: Q. Oh, I'm so sorry. It's 20049, at the
15: bottom of the page.

Plaintiffs Objections 402 relevance; 403 waste of time :

16: A. Oh, okay. Sorry.
17: Q. Got it?

18: A. Yes, ma'am.

19: Q. Okay. So I just read into the record those

20: first two sentences.

21: A. Uh-huh.

22: Q. Give you a second.

23: A. Okay.

24: Q. Okay. So do you know if anyone was, in

25: fact, evaluating these TEC3000 failure reports?

(continued page 00058)

0058

01: A. At Extron or at Chart?

02: Q. Either.

03: A. At Extron, I do not know, and because of

04: that, Chart took the initiative to voluntarily do

05: testing on our own.

06: Q. Okay. And who was involved in that

07: testing?

08: A. I did some testing, and then it got pushed

09: on to an actual electrical engineer.

10: Q. What testing did you do?

11: A. So any kind of reported serial number

12: equals zero or any kind of symptoms, we would ask

13: for those controllers back. I would then take a

14: freezer that was in our lab at the time and put that

15: controller on that freezer and see if I can't mimic

16: what was in the field.

17: Q. Okay. And were you able to do that?

18: A. On just a couple of them, yes, ma'am.

19: Q. Okay. But on some of them you weren't able

20: to reproduce the problem?

21: A. I was not.

Plaintiffs Objections 602 speculation:

22: Q. Okay. For the ones that you were able to
23: reproduce it on, I'm assuming that you -- well, were
24: you doing this test in an area that had a high
25: amount of electrical interference?

(continued page 00059)

0059

01: A. Could be, yes, ma'am.
02: Q. Yeah? Okay. Why would you do testing in
03: an area with a high amount of electrical
04: interference?
05: A. Well, then again, I'm just speculating, but
06: there could be, because at the time, we're still
07: trying to figure out what the true root cause was,
08: and by the end of my stint there at Chart, we
09: believed the electrical interference could be coming
10: from the solenoid valves on the freezer, the feed
11: valve that I was telling you about.
12: Q. Okay. So tell me -- tell me a little bit
13: more about that. What led you to believe that the
14: solenoid valve on the freezer was causing electrical
15: interference?
16: A. To be honest with you, I do not know. That
17: wasn't my project. So I was just -- word of mouth,
18: that's what I was hearing.
19: Q. You heard that from somebody else.
20: A. Yes, ma'am.
21: Q. Okay. Do you remember who told you -- who
22: mentioned the solenoid valve issue to you?
23: A. It was the electrical engineering team,
24: Richard Leboff. And then I can't remember what this
25: guy's role was. He was an engineer, but Ben Carey.

(continued page 00060)

0060

01: Q. Okay. And when was that?

02: A. To be honest with you, I can't remember the

03: true dates.

04: Q. Okay. Was it toward the end of your time?

05: A. Yes, ma'am.

06: Q. So probably 2019?

07: A. 20 -- end of 2018, 2019-ish, yeah. Sorry.

08: Q. Okay. Great. Thank you. No, that's

09: helpful. And so up to that point, you had been

10: doing some testing on your own?

11: A. Yes, ma'am.

12: Q. Did you ever form any conclusions about

13: this SN=0 issue?

14: A. No, ma'am. No, ma'am. That's why we push

15: it on electrical engineers.

16: Q. Okay. So if you skip down a little bit,

17: Mr. Wade says, "The SN=0 is usually accompanied by

18: settings going haywire, level reading zero and both

19: temps reading -273 [Celsius]."

20: A. Uh-huh.

21: Q. "Even if the controllers are functional

22: afterward customers are not comfortable keeping the

23: controllers installed as they see it as a failure

24: regardless."

25: A. Yes, ma'am.

(continued page 00061)

0061

01: Q. So he's listed here a couple

02: characteristics: level reading zero, both temps

03: -273, and the serial number reading zero, correct?

04: A. Yes, ma'am.

05: Q. Were all of those characteristics present

06: every time you saw this issue or --

07: A. No. I'm sorry.

08: Q. Go ahead.

09: A. No, ma'am.

10: Q. They were not?

11: A. No.

12: Q. Okay. Anything consistent about this issue

13: that you remember that was always present?

14: MR. SMITH: Vague.

15: A. It was really one or the other or it was

16: both. It really just varies, level zero and then

17: the temps reading off.

18: BY MS. COWAN:

19: Q. Okay. But if you saw -- if Chart saw any

20: of these characteristics, did they essentially lump

21: these all together as being this electrical

22: interference issue?

23: MR. SMITH: Calls or speculation.

24: A. Yes, ma'am.

Page 00065

Defense Objections Objection -- Plaintiffs dismissed their failure to warn claim; criticism of failure to warn is unduly prejudicial, confusing and not relevant to any remaning claim; FRE 403:

03: Q. Did anyone ever tell you to tell Chart's

04: customers, the distributors, anything about this

05: electrical interference issue?

06: A. No, because we still didn't know the true

07: root cause to it, and we didn't want to make our

08: customers alarmed because we don't have a true -- we

09: didn't have a true fix for it at the time that I was

10: working there.

11: Q. Okay. And so were you instructed not to

12: tell your distributors about it because of this

13: concern?

14: MR. SMITH: Misstates evidence.

15: A. Directly, no. We weren't never [sic] told,

16: hey, you can't tell them this. If they ask,

17: absolutely, hey, we're working on this, yes.

18: (Plaintiffs' Exhibit 125 marked.)

19: BY MS. COWAN:

20: Q. Okay. All right. I'm going to mark as

21: Exhibit 125 document starting with Chart Bates

22: CHART67350.

Page 00066

Defense Objections See Objection to Trial Exhibit 266 (Doc. 783-1); inadmissible other occurrence evidence not previously ruled on; not substantially similar; FRE 403/802/803:

01: Q. Okay. I would like to turn to the page

02: ending in 67352. So this is an email from Jayde

03: Laundress of Chart Australia to an email address

04: techservice.usa@chartindustries.com.

05: Who answers that email?

06: A. At that time, it was just the three to five

07: of us.

08: Q. Okay. So let me make sure I understand

09: this correctly. It would go to this general email,

10: and then one of the three of you who were field

11: service engineers would take that particular ticket?

12: Is that how it works?

13: A. Essentially, yes, ma'am.

14: Q. Yeah?

15: A. Uh-huh.

16: Q. Okay. And do you -- did you answer this

17: ticket?

18: A. I believe -- does it -- yes.
19: Q. Okay. And do you recall this email
20: exchange?
21: A. Just up and to looking at it right now,
22: yeah.
23: Q. Okay.
24: A. That I can remember.
25: Q. And she states in this email, We've "been

(continued page 00067)

0067

01: experiencing" -- "We have been experiencing a spate
02: of TEC3000 controllers in Australia going into the
03: error of not showing any level on the display." And
04: then she states a little bit further down, "The
05: Thermofisher technicians are attempting power reset,
06: and reboot of the controller which does nothing, but
07: a full system reset does resolve the issue, but then
08: wipes the stored information in the process. I have
09: tallied 7 controllers malfunctioning in this way in
10: the last 3 months." And then she asks, "Is this
11: issue happening elsewhere and is there anything we
12: can do about it?"
13: So are you familiar with Ms. Laundess?
14: A. Yes. She's a sale rep for Australia.

Plaintiffs Objections 602 no personal knowledge :

15: Q. Okay. And have you -- on the next page you
16: responded to these questions that she raised, and it
17: looks like you apologized and then you offered some
18: suggestions.
19: A. Uh-huh.
20: Q. Is that correct?
21: A. Yes, ma'am.
22: Q. And one of the things that you state
23: specifically is "Level issues may also be caused by

24: third party remote alarm system, or possible
25: interference from radio waves/tower, or fluctuation

(continued page 00068)

0068

01: in nearby power lines."
02: A. Uh-huh.
03: Q. What was your basis for saying that?
04: A. Just from the training that I received from
05: my higher ups.
06: Q. Who did that training?
07: A. It was not necessarily an official
08: training, but it was Brendon and Ramon just saying,
09: hey, it could potentially be interference from the
10: third-party alarm system or the interference
11: elsewhere that was stated in the email.

Page 00069

11: Q. Okay. You say, "If the voltage is good
12: remove any third party remote alarm system..."
13: A. Uh-huh.
14: Q. So at this point in time, did you -- my
15: understanding and your testimony has been that
16: third-party remote alarm systems could cause this
17: kind of interference; is that correct?
18: Is that what you believed at the time?
19: A. Potentially, yes, ma'am, it could the
20: interference. In this instance, we asked to first
21: verify that the voltage and the power supply was
22: good, and then also remove the remote alarm system
23: to see if maybe that was culprit. And then if that
24: didn't fix the issue, plug that back in, of course,
25: and then perform a restore to defaults.

Page 00070

Defense Objections Objection -- argument :

21: Q. Got it. So when she said in her prior
22: email that you -- that she has "tallied 7
23: controllers malfunctioning in this way in the last 3
24: months," did that seem like high number?
25: Did that seem like a high failure rate to

(continued page 00071)

0071

01: you?
02: MR. SMITH: Vague.
03: A. Yes. But then again, a lot of folks, a lot
04: of customers, they'll -- especially overseas like
05: that, they will gather them up and stockpile, if you
06: will, for months on end, and this could be one of
07: those instances.

Plaintiffs Objections 602 speculation :

08: Q. Did she tell you --
09: A. So it wasn't --
10: Q. -- that that's what happened here?
11: A. No, ma'am, but that's usually our thought
12: process.
13: Q. Based on?
14: A. Just normal clientele. They usually do
15: something like that to save money on shipping to
16: ship back.

Page 00071

25: Q. I'm just trying to understand what you're

(continued page 00072)

0072

01: saying.
02: A. Yes, ma'am. So a lot of times they have --

03: a lot of customers, they have TEC3000s on hand, and
04: they can swap out or they purchase a new one. So
05: these are -- these may have -- in this instance, I
06: can't -- I'm just speculating maybe these are --
07: maybe these are already replaced, and they -- here
08: is seven that they need to go back.
09: Q. Okay. So -- but you don't have any --

Page 00072

14: Q. Okay. Did it concern you, when you
15: received this email, to hear that seven -- she was
16: reporting that seven malfunctioned in the last three
17: months?
18: A. Not necessarily because a lot of times
19: issues with TEC3s -- TEC3000s, excuse me, end up
20: being end-user error. So that's why I'm asking for
21: a download. Can I please see the download so I can
22: then kind of look at the true data and see whether
23: or not there actually is an issue with the
24: controller or if it's just kind of end-user error.
25: Q. So you are not concerned about a TEC3000

(continued page 00073)

0073

01: malfunctioning if it's caused by end-user error?
02: A. We are, but it's -- we are, and we want to
03: fix those issues and help end users, absolutely.
04: But I was not necessarily in alarm, if you will, me,
05: lack for a better term, wiggling out, if you will,
06: because those freezers can maintain LN2 and
07: temperature for quite a while, for weeks on end.

Defense Counters Congtingent on whether Trial Exhibit 266 is admitted.:

08: Q. Okay. So she did send you a download,
09: correct, from at least one of the tanks?

10: A. I can't remember. I'd have to read through
11: the email.
12: Okay. Yes, ma'am. From the email just
13: above, it does appear that I did receive a download,
14: yes, ma'am.

Defense Objections See Objection to Trial Exhibit 266 (Doc. 783-1); inadmissible other occurrence evidence not previously ruled on; not substantially similar; FRE 403/802/803:

15: Q. Okay. And she goes on to say, "This is the
16: exact problem that we have been seeing often here in
17: Aus" -- which I'm assuming is short for Australia --
18: "- always on controllers with [version] 2.03
19: software. Any ideas as to what could be causing it?
20: She says, "This particular site has 6 times
21: CS6000FA - and this is the third controller to do
22: this 0 level reading in the past 12 months."
23: What is CS6000FA?
24: A. A CryoSystem 6000 Full Auto.
25: Q. Okay. It's a type of freezer?

(continued page 00074)

0074

01: A. Yes, ma'am. Actually, this one is in an
02: aluminum dewar, but it's large enough to essentially
03: become a freezer. You put a plumbing stack, build
04: it into the vacuum space, and attach a TEC3000 to
05: it.
06: Q. Okay. And so it used the same controller
07: as was used on Chart's stainless steel line?
08: A. Yes, ma'am.
09: Q. Okay. And she says, "They also had a 1500
10: series freezer with the same problem about a year
11: ago. The complaint from users is that the alarms
12: generate call outs for staff afterhours who come in
13: to see the 0 level reading, when actually the tank
14: is fine."

15: A. Uh-huh.

16: Q. Is that complaint that there were alarms

17: going off when alarms shouldn't have been going off,

18: was that a -- something that you heard commonly with

19: people experiencing this electrical interference

20: issue?

21: MR. TARANTINO: Objection. Vague.

22: A. Yes, ma'am, and the freezers were fine.

Page 00074

Defense Counters Congtingent on whether Trial Exhibit 266 is admitted.:

24: Q. All right. The first page, we have your

25: last email in this thread?

(continued page 00075)

0075

01: A. Yes, ma'am.

02: Q. And you say you "completely understand how

03: this could be annoying to the customer." I'd agree

04: with you. And you say, "I believe I have a hunch as

05: to what could be causing this issue." And then you

06: ask her to do a couple of steps to find out if the

07: serial number -- what the serial number is.

08: Were you trying to get to whether or not it

09: said serial number equals zero? Is that what the

10: purpose was here?

11: A. Essentially, yes, ma'am.

12: Q. Okay. Why wouldn't you have suggested that

13: at the beginning? I'm just trying to understand

14: your thinking here.

15: A. Really, I start with the simple stuff first

16: and then work towards the hardest stuff to see if we

17: can try to vet out, because I would hate to go down

18: the wrong path and do all of this hard intricate

19: work, and then it would be something simple.
20: Q. Okay. All right. And then you state a
21: little bit lower in your email, "You and have
22: been" -- which I assume you meant "you and I have
23: been" -- "discussing this scenario multiple times
24: now for different customers in Australia. We have
25: noticed if a company's facility is near older power

(continued page 00076)

0076

01: lines, that have a lot of power fluctuations, they
02: cause some electrical interference with the
03: TEC3000."
04: So you are stating here that you have
05: discussed this multiple times with her. About how
06: many times would you say you had discussed with
07: Ms. Laundess this issue in Australia?
08: A. To be honest with you, that being a couple
09: years ago, I can't remember.

Page 00076

17: Q. Okay. And you say, "We have noticed if a
18: company's facility is near older power lines, that
19: have a lot of power fluctuations, they cause some
20: electrical interference."
21: What was your basis for saying that?
22: A. It was just really through the training
23: that I received, and also just in a -- from a
24: scientific standpoint makes sense.

Plaintiffs Objections 602 speculation:

25: Q. Did you ever confirm that the facilities

(continued page 00077)

0077

01: experiencing these things were actually near older

02: power lines?

03: A. There were a couple of instances, yes.

04: Q. Okay. What did you do to confirm that?

05: A. Well, really, just kind of looking outside,

06: really, and seeing -- first of all, one was in New

07: York, and that's older infrastructure. And then

08: there was another time that Brendon went to a

09: customer site, and they were out in the -- not

10: towards any kind of city or anything like that.

11: Kind of out in an old town, if you will. I forget

12: where the location was at. But you kind of noticed

13: it was an older town, and came to the same

14: conclusion.

15: But there was still no substantial evidence

16: that that was truly the root cause. It was just an

17: assumption of ours and thought maybe the ferrites

18: would help.

19: Q. Okay. But you didn't you didn't do any of

20: this confirmation in Australia; is that correct?

21: A. No, ma'am.

22: Q. Okay.

23: A. I just asked the question.

24: Q. Did you ever see the problem in a facility

25: that was not near older power lines?

(continued page 00078)

0078

01: A. Not to my recollection, no, ma'am.

02: Q. And how did you confirm -- in the ones that

03: were near power lines, how did you confirm that they

04: were having power fluctuations?

05: A. It was all assumption based. In reality,

06: in New York, it was really the exposed wiring from
07: the construction that was going on at the hospital
08: that I believe -- and the helipad being right above.

09: Q. All right. In this next section, you say
10: that "We do not have definitive data to support
11: this, but you could add a ferrite on the power
12: supply cord" and couple other places.
13: So this is essentially the ferrite fix that
14: we discussed before; is that correct?

15: A. Yes, ma'am.

16: Q. Okay. Why wasn't there any definitive data
17: to support this as a fix?

18: A. Because any of our testing that we've done,
19: it was really inconclusive. We couldn't pinpoint
20: the root cause.

21: Q. Okay. So what you're saying is sometimes
22: it didn't fix the problem; is that correct?

23: A. Yes, as you can see from New York, yeah, it
24: did not fix the issue.

Page 00079

07: Q. Did you report this -- this issue in
08: Australia to anybody -- anybody else at Chart?

09: A. Yes. It would have been -- since it's from
10: the tech service email, Brendon Wade was copied on
11: it, and he is my upper management.

12: Q. Okay. Was there any follow-up on this
13: particular issue within Chart?

14: A. That, I can't remember.

15: Q. Okay.

Page 00080

Defense Objections See Objection to Trial Exhibit 266 (Doc. 783-1);

inadmissible other occurrence evidence not previously ruled on; not substantially similar; FRE 403/802/803:

06: Q. I'm going to mark as Exhibit 126 the
07: document starting CHART20474.
08: A. Thank you.
09: Q. Mr. Junnier, have you seen this document
10: before?
11: A. I mean, I wrote it, so, yeah, but this is
12: the first time I'm looking at it right now.
13: Q. Okay. Did you review it yesterday?
14: A. Yes. Yes, I did review it yesterday.
15: Q. Okay. Thank you.
16: A. Yeah.
17: Q. On the second to last and last pages of
18: this exhibit, there's an email from Tom Quirk, at
19: Pacific Science, on April 6th, 2017.
20: Do you know who Tom Quirk is?
21: A. He's a sales rep.
22: Q. In what area?
23: A. I do not know.
24: Q. Okay. So he writes, "Our good customer
25: Kite Pharma had an issue with their 819HEco unit

(continued page 00081)

0081

01: last week. The controller was reading 0" of liquid
02: when there was actual liquid in the freezer. Both
03: temperature probes were reading -273C. Controller
04: currently has version 2.03."
05: A. Uh-huh.
06: Q. So is this -- to your understanding, does
07: this seem like the same issue that we have been
08: discussing and sort of calling electrical
09: interference?

Defense Counters Contingent on whether Trial Exhibit 220 is admitted:

10: MR. SMITH: Vague.

Plaintiffs Objections 402 relevance; 403 waste of time:

11: A. Do you mind if I read over it again just --

12: BY MS. COWAN:

13: Q. Take your time.

14: A. Thank you.

15: Okay. Sorry about that. What was your

16: question again?

17: Q. Not a problem.

Defense Objections See Objection to Trial Exhibit 266 (Doc. 783-1); inadmissible other occurrence evidence not previously ruled on; not substantially similar; FRE 403/802/803:

18: Does this -- from his initial email to you,

19: does that seem like the problem that we've been

20: discussing under the heading "electrical

21: interference"?

22: MR. SMITH: Vague and misstates evidence.

23: A. Potentially, yes, ma'am.

24: BY MS. COWAN:

25: Q. Okay. And he mentions that this is

(continued page 00082)

0082

01: happening at Kite Pharma. Do you know what Kite

02: Pharma is?

03: A. Other than I know it's a customer of

04: theirs.

05: Q. A customer. Okay. But you don't know what

06: kind of business they do?

07: A. No, ma'am.

08: Q. Okay. And he says that controller

09: currently has version 2.03. I assume that's the

10: software?

11: A. Yes, ma'am.

12: Q. Okay. Essentially like an operating

13: system; is that correct?

14: A. Yes. Yes, ma'am.

15: Q. Okay. And I believe that the --

16: Ms. Laundess had also mentioned that in her email.
17: Did you ever have any reason to suspect
18: that the version of software was contributing to
19: this issue?
20: A. No, ma'am. We never came to a root cause
21: that that was even an issue at all.
22: Q. Okay. He goes on to say, "Ron Pittner went
23: out and reset the controller to factory setting and
24: calibrated. Unit seems to be working fine now, but
25: customer wants to know the root cause of this

(continued page 00083)

0083
01: issue."
02: Do you know -- do you know who Ron Pittner
03: is?
04: A. Yeah. He's a sales rep as well.
05: Q. Okay. And he says, "They have valuable
06: product that's irreplaceable. They are launching a
07: full scale investigation on what caused these
08: issues. This is not the first time we have seen
09: these issues. I would like to set up a conference
10: call with you to discuss."
11: Is this concerning to you?
12: A. Yes and no, because -- because, then again,
13: if these samples were in the freezer, if there is
14: LN2 in the freezer, that can last for a couple of
15: weeks.

Page 00091

Defense Objections See Objection to Trial Exhibit 225 (Doc. 783-1); inadmissible other occurrence evidence not previously ruled on; not substantially similar; FRE 403/802/803:

12: (Plaintiffs' Exhibit 127 marked.)
13: MS. COWAN: I'm going to mark as
14: Exhibit 127 a document with a Bates CHART029279.

15: A. Thank you.

16: Q. Okay. Let's start with the last email

17: again. And this is a message to you from Juan

18: Arevalo --

19: A. Uh-huh.

20: Q. -- on May 3rd, 2017. Who is Mr. Arevalo?

21: A. Juan is actually the guy -- it was the

22: other guy in New York that I met with.

23: Q. So he's a distributor?

24: A. He is -- essentially he's me but for a

25: different company. He's a tech service guy as well,

(continued page 00092)

0092

01: and the field service guy, and fixes units. He was

02: not a sales rep.

03: Q. Okay. What -- what -- what company did he

04: work for?

05: A. Tech Air.

Defense Counters Contingent on whether Trial Exhibit 225 is admitted:

06: Q. Tech Air. Okay. And he says, "I just need

07: to know what are the RF signal's ranges that can

08: affect the operation of the TEC-3000."

09: A. Uh-huh.

10: Q. Did you -- do you understand the RF here to

11: stand for radio frequency?

12: A. Yeah.

13: Q. Okay.

14: A. Yes, ma'am.

15: Q. And do you know the answer to this

16: question?

17: A. No, ma'am.

18: Q. Okay. And what is your understanding of

19: what he's asking here?

20: A. Really not much. That's why in the email

21: above it says that's a great question, and I -- I

22: don't know.

Page 00093

Defense Counters Contingent on whether Trial Exhibit 225 is admitted:

08: Q. Okay. And you respond, "I do not know if

09: we've done any testing as to how far the range is

10: for this interference to affect the TEC 3000. Since

11: this is not a common issue for our TEC 3000 we have

12: not dug too much into the research other than using

13: ferrites to help prevent this issue."

14: Is everything in that that I just read, is

15: that accurate?

16: A. Yes, ma'am. Yeah.

17: Q. Okay. Would you agree this is not a common

18: issue?

19: A. Correct, yes, ma'am.

Page 00094

Defense Objections See Objection to Trial Exhibit 225 (Doc. 783-1); inadmissible other occurrence evidence not previously ruled on; not substantially similar; FRE 403/802/803:

14: Q. You said, "Juan was asking how far of a

15: range could this interference issue begin to affect

16: the TEC 3000. Have we done any kind of testing for

17: this? I wouldn't think so since this is not that

18: crucial for us to figure out since we are launching

19: the TS controller this year."

20: Does TS stand for touch screen?

21: A. Yes, ma'am.

22: Q. Okay. Can you explain to me why this is

23: not crucial for Chart to figure out?

24: A. It was our thought process that this touch

25: screen controller would be the end -- hopefully the

(continued page 00095)

0095

01: end-all, be-all to fix these interference issues,
02: but then again, that was speculation. We were
03: optimistically hoping for the best.
04: Q. Okay. And when Chart released it's touch
05: screen controller, did it send a new controller to
06: everybody had who controllers in the field?
07: A. No, ma'am.
08: Q. Okay.
09: A. We did have --
10: Q. And --
11: A. Sorry.
12: Q. Sorry. Did you have further --
13: A. I was just going to say we had upgrade kits
14: available. So, yes, they could do so.
15: Q. Okay. But I didn't replace all the
16: TEC3000s in the field.
17: A. No, ma'am. That would have been a lot
18: of -- a lot of freezers.

Page 00096

Defense Objections Objection -- Plaintiffs dismissed their failure to warn claim; criticism of failure to warn is unduly prejudicial, confusing and not relevant to any remaning claim; FRE 403:

03: Q. Okay. And did Chart inform all of its
04: customers, when it released the touch screen
05: controller, that the new touch screen controller had
06: resolved the electrical interference issue that they
07: had -- that Chart had seen with the TEC3000s?
08: MR. SMITH: Compound.
09: A. No, ma'am. Their -- we did send a bulletin
10: out letting everyone know, hey, we have the new
11: touch screen. But, no, we did not put anything in
12: there stating that this will fix it because we still
13: didn't know.

14: Q. Okay. What would you say is the life span
15: of the TEC3000?
16: A. Then again, I couldn't even speculate.
17: Sometimes it would be five, six, seven years, no
18: issue. Sometimes, if there was a legitimate issue,
19: it could last 90 days. It varies.
20: Q. A controller can last 90 days?
21: A. Well, if there's actually a malfunction
22: with one, yes. Like if ,from Extron, the supplier.

Page 00097

Defense Objections Chart's objection to Trial Exhibit 206 was overruled by the Court (objection preserved):

17: MS. COWAN: I'm going to mark as
18: Exhibit 128 a document starting with the Bates
19: CHART7923.

Page 00098

Defense Objections Chart's objection to Trial Exhibit 206 was overruled by the Court (objection preserved):

07: Q. Okay. So this thread begins with
08: Mr. Arevalo, who we already discussed --
09: A. Uh-huh.
10: Q. -- sending a log file to Katy Haley at --
11: also at Tech Air, for Dr. Klebanoff.
12: Do you -- are you familiar with Ms. Haley?
13: A. Yes, ma'am. She's the sales rep, and Juan
14: works with Katy.
15: Q. Okay. And they sell Chart products?
16: A. Yes, ma'am.
17: Q. Okay. And do you know who Dr. Klebanoff
18: is?
19: A. No, ma'am.
20: Q. Okay. From this do you -- from this entire
21: email thread do you conclude that that's an end user
22: of Chart product?

23: A. Yes, ma'am.

Page 00099

Defense Objections Chart's objection to Trial Exhibit 206 was overruled by the Court (objection preserved):

10: Q. Oh. I will just read it. "Hi Justin- I

11: need a quick favor. Wondering if you can evaluate

12: the attached logs going back to mid-February.

13: Customer claims there was a significant temperature

14: spike at some point over the last two weeks, but

15: Juan doesn't think there was any issue. Can you

16: review and report your findings in writing so we can

17: present to the customer."

18: What do you understand her to be asking you

19: to do here?

20: A. To review an event log and then also to

21: give my findings and -- and -- and have it in

22: writing.

23: Q. Okay. And what kind of findings?

24: A. If there was any kind of issue with the

25: TEC3000 or the freezer itself. Looking at the event

(continued page 00100)

0100

01: log.

02: Q. Okay. And do you understand that there's

03: some difference of opinion, perhaps, as to whether

04: or not there was the temperature spike?

05: A. Yes, ma'am.

Page 00100

08: A. Yes, it -- Juan -- Juan believes that he

09: doesn't think there was any issue while the doctor

10: believes there could be.

11: BY MS. COWAN:

12: Q. Okay. You did, in fact, look at those

13: logs, correct?

14: A. If it was attached, yes, ma'am.

15: Q. Okay. And then you send an email to

16: Mr. Gonzalez, saying, you know, "Thank you for

17: forwarding this... It definitely appears the supply

18: tank was empty, which cause the low level and the

19: high temp issue."

20: First of all, so your conclusion is that

21: there actually was not sufficient LN2 in the tank;

22: is that correct?

23: A. Sufficient LN2 in the supply tank.

Plaintiffs Objections 602 speculation:

24: Q. Right.

25: A. Which happens -- it's end-user error and

(continued page 00101)

0101

01: happens -- I mean -- well, the majority of the time

02: that's what ended up happening.

Page 00101

Defense Objections Chart's objection to Trial Exhibit 206 was overruled by the Court (objection preserved):

10: Q. The next thing that you write is, "My

11: concern is the drop below the glass transition

12: phase, which could destroy the cell structure of

13: their samples."

14: Can you explain that sentence to me?

15: A. Yes, ma'am. So if -- if you were to heat

16: up samples, you know, kind of like if it's something

17: in your freezer, for instance, and you take it out,

18: and you thaw it out, and you freeze it again, it

19: just kind of tastes funny, similar -- kind of

20: similar concept to this, where if you heat up

21: samples, you actually -- you could damage the DNA

22: structure of whatever sample may be in the freezer.

23: Q. Okay. And that's what you are concerned
24: about here?
25: A. That's what I'm potentially concerned

(continued page 00102)

0102
01: about, but it's all assumption.
02: Q. Okay. And that's because there was -- I'm
03: just -- I'm assuming from your sentence here that
04: you saw a drop below the glass transition phase.
05: A. Yes, ma'am, which is minus 135C, if I
06: remember correctly.
07: Q. Okay. So if I'm understanding correctly,
08: from this it appears that you saw temperatures that
09: were warmer than that.
10: A. Yes, ma'am.
11: Q. Okay. And you are asking whether you
12: should bring that up. Why did you ask Mr. Gonzalez
13: if you should bring that up?
14: A. Because, then again, I'm just assuming.
15: Q. Let me -- let me make the question a little
16: better.
17: A. Thank you.
18: Q. So you say, "Do I even attempt to bring
19: that up or should we let the customer make that
20: assumption? I definitely do not want to open up a
21: can of worms on this one and wanted to see what your
22: thoughts are."
23: A. Uh-huh.
24: Q. What's the can of worms that you are
25: referring to there?

(continued page 00103)

0103

01: A. Just I don't want the customer freaking
02: out, essentially, if it's not really a concern.
03: Q. Okay.
04: A. Because, then again, I'm not a
05: microbiologist, and this is just my assumption,
06: thinking that there was -- there could be an issue
07: because of the glass transition phase.
08: Q. Okay. And Mr. Gonzalez replies and says,
09: "Please do not mention temp dropped below glass
10: transition or that samples may have been
11: compromised."
12: Did you, in fact, mention that to either
13: the people at Tech Air or the end user?
14: A. If it's not in this email, no, ma'am.

Defense Counters Contingent on whether Trial Exhibit 225 is admitted:

15: Q. Okay. I would like to look at the logs
16: that were attached to this thread.
17: A. Okay.
18: Q. And I'm -- it's an extensive document.
19: A. Oh, yeah.
20: Q. So I only have -- I've only printed the
21: first 15 pages. Okay? Because that's just the time
22: period that I'm interested in.
23: (Plaintiffs' Exhibit 129 marked.)
24: MS. COWAN: And I'm going to mark that as
25: Plaintiffs' Exhibit 129. The Bates is CHART10477.

(continued page 00104)

0104

01: Q. Okay. Do you recognize this document?
02: A. Yes. Yes, this is an event log.
03: Q. And is this, in fact, the log file for that
04: controller?
05: A. Yes, ma'am.

06: Q. To the best of your knowledge? Okay.

07: And so this Chart that starts on the second

08: page, what does this show?

09: A. It shows the data entries that are stored

10: into the TEC3000.

11: Q. Sorry. I mean the chart on the second

12: page.

13: A. Oh, my bad. This is showing a comparison

14: between temperature probes A and B versus the liquid

15: level.

16: Q. Okay. And let's now get to the third page

17: that you were looking at. What does this table

18: show?

19: A. As mentioned a second ago, that was --

20: those are the actual data entry points that are

21: saved into the TEC3000.

22: Q. Okay. And this is -- there are readings

23: taken at a number of different times, correct?

24: A. Yes, ma'am.

25: Q. And those readings are Temp A and Temp B,

(continued page 00105)

0105

01: and liquid nitrogen level, and usage, correct?

02: A. Yes, ma'am.

03: Q. Okay. What's the difference between Temp A

04: and Temp B?

05: A. Temp A and Temp B, so there's two probes,

06: and you can have -- usually we recommend to have one

07: at the top box, which is right at the very top of

08: the freezer, and one down below -- or in the actual

09: LN2 itself.

10: Q. Okay. So am I right that the reason to
11: take different readings is that there might be
12: slightly different temperatures within the tank
13: itself?
14: A. Yes, ma'am. Of course, heat rises, so you
15: will have temperature differences at the top.
16: Q. Okay. And am I correct in reading this
17: that this is essentially a reverse chronological, so
18: the -- the most recent is at the top and then it
19: gets -- and then it goes down?
20: A. Yes, ma'am.
21: Q. Okay. And --
22: MR. SMITH: I'll just note for the
23: record -- I'm not sure if it makes any difference --
24: but the event code --
25: MS. COWAN: Yeah, it should be lined up.

(continued page 00106)

0106
01: THE WITNESS: Yeah, this is --
02: MS. COWAN: I'm not -- so this is a
03: printout of a -- of an Excel.
04: THE WITNESS: Yeah.
05: MS. COWAN: I'm not going to ask any
06: questions about the event code, so it doesn't really
07: matter.
08: THE WITNESS: Okay.
09: BY MS. COWAN:
10: Q. So I would like to look at two different
11: sections of this.
12: MR. SMITH: It may matter to him. I don't
13: know if --

14: MS. COWAN: Oh, yeah, it may --

15: THE WITNESS: Yeah, that's my concern.

16: BY MS. COWAN:

17: Q. I understand. Sorry about that.

18: The first one that I want to look at starts

19: around Record 180. And I'm looking at the period

20: between 180 and 149-ish.

21: A. Okay.

22: Q. Okay. And if you look at the -- the

23: entries, I'm looking at the LN2 level, and it looks

24: like it declined over, you know, a couple -- over a

25: day and a half or so here, and then it was zero for

(continued page 00107)

0107

01: the end of February 16th and most of February 17th.

02: Is that correct? Am I reading this

03: properly?

04: A. Yes, ma'am, that's what this seems. But I

05: really need to see the actual event codes to be the

06: true storyteller.

07: Q. Okay. So the event codes are on the next

08: page.

09: A. In front or behind it?

10: Q. Behind it.

11: A. Okay. Thank you. Okay.

12: Q. So if you look at those, it's starting five

13: up from the bottom up to, it looks to me, roughly

14: where the event codes stop for a little while.

15: A. Okay.

16: Q. Does that help you determine what was going

17: on with the liquid nitrogen level during this time

18: period?

19: A. A little bit, yes, ma'am. So I'm -- I'm

20: looking back at the current settings of this freezer

21: up here, and I'm trying to look at the high level

22: alarm, high level set point, low level set point,

23: low level alarm. Five inches. Let's go back to

24: 180.

25: Q. Is LL the event code for low level?

(continued page 00108)

0108

01: A. Yes, ma'am.

02: Q. Okay. And what is FT? What does that

03: event code stand for?

04: A. Fill time. So that means that the freezer

05: is calling for a fill, but it's actually timed out

06: because there's not a sufficient amount of LN2 going

07: to the freezer.

08: Q. Okay. So that problem, it looks like, was

09: starting earlier.

10: A. Yes, ma'am. I was actually looking back,

11: and it started -- it actually tried to fill because

12: it reached its low level set point. And when it --

13: and it hits fill time, there could be a couple of

14: things that could be causing that, but the

15: majority -- 99 percent of time it's because the LN2

16: supply tank is empty.

17: Q. Okay. All right. So from this section

18: from 180 to 149, is it your understanding, based on

19: the event codes and the readout here, that the LN2

20: level dropped to zero at some point?

21: A. Yes, ma'am.

22: Q. It decreased and then it dropped to zero?

23: A. Uh-huh.

24: Q. Okay. And looking at this, looking at the

25: log, did that have an effect on the temperature

(continued page 00109)

0109

01: within the tank?

02: A. Yes, it eventually did.

03: Q. Okay. Can you say a little bit more about

04: that?

05: A. Yes. So see here, so it's calling for a

06: fill, calling for a fill, calling for a fill. It's

07: slowly depleting it's LN2 level. And then about

08: 152, you see a top box temperature decrease, about

09: 7 degrees.

10: Q. Okay.

11: A. And then it drops another 10 degrees, and

12: then continues to drop because there's nothing in

13: the tank.

14: Q. Okay. And so you were -- where do you see

15: that it first starts calling for a fill and not

16: having everything it needs?

17: A. So if you go to the next page, so starting

18: on Record 185.

19: Q. Okay.

20: A. So one -- what number is that? So if you

21: go to the actual codes, one, two, three, four --

22: fourth line down, one, two, three, four, so 188,

23: when it hits its LN2 level of five inches, and

24: that's what the end user had it set at, is when it

25: hits that low level set point, it calls for a fill.

(continued page 00110)

0110

01: Q. Uh-huh.

02: A. And so when you look at the event code, the
03: freezer acknowledges the fill, and then over time it
04: went into a fill time alarm because there's no LN2
05: in the supply tank.

06: Q. Okay. So that was February 13th, when it
07: started calling for --

08: A. Yes, ma'am.

09: Q. Okay. And by a few days later, on the
10: 17th, the temperature in the tank is affected; is
11: that correct?

12: A. Yes, ma'am.

13: Q. Okay. And, in fact, it looks like it may
14: have reached that last transition phase that you
15: were talking about; is that correct?

16: A. Yeah, it almost did, yeah.

17: Q. Yeah.

18: MR. SMITH: Misstates testimony.

19: MS. COWAN: Okay.

20: MR. SMITH: Misstates evidence.

21: BY MS. COWAN:

22: Q. All right. So the next one I want to look
23: at is Record 108.

24: A. 108. Okay.

25: Q. Okay. So I want to look at the same --

(continued page 00111)

0111

01: sort of want to go through the same exercise. To me
02: it looks like the LN2 level here is dropping from

03: about 108, which is the afternoon of February 21st,
04: and then it starts to drop through until on the
05: 24th; it hits zero again.

06: Is that -- am I understanding that
07: correctly?

08: A. You said on the 24th?

09: Q. Sorry. It's Record 67.

10: A. 67. Yes, ma'am.

11: Q. Okay. And same thing here. Once the tank
12: reaches, you know, no liquid nitrogen, the
13: temperature in the tank started to rise; is that
14: correct?

15: A. Yes, ma'am. But if you look at the event
16: code again, I see it tried to call for a fill when
17: it hit its low level set point. And looking at this
18: event code, the fill time alarm was going off the
19: entire time. So when this happens, it's usually the
20: supply tank is empty, and the end user didn't have
21: their supply tank filled.

22: Q. Okay. So there's an alarm going off this
23: whole time.

24: A. Yes, ma'am.

25: Q. Unless the alarm is muted.

(continued page 00112)

0112

01: A. Correct. And it looks like they appear to
02: have muted it a couple of times.

03: Q. Okay.

04: A. To ignore it.

05: Q. Okay. And so you saw this. You saw that
06: that -- is that what you would have concluded when

07: you looked at this?

08: A. Yes, ma'am.

09: Q. Okay. And it looks like by the 25th, so
10: the day after the liquid nitrogen ran out, we have
11: temperatures that are lower than negative 135,
12: correct?

13: A. Yes, ma'am, that Record 58.

14: Q. All right. And, in fact, the temperature
15: continues to increase.

16: A. Yes, ma'am.

17: Q. All right. And from my reading of this,
18: the highest temperature that we see is negative 60.1
19: at Record 31.

20: Is that -- I'm not going to ask you if
21: that's the highest, but --

22: A. I do see that, yes, ma'am.

23: Q. Yeah? Okay. And is it fair to say that
24: negative 60 degrees, as well, well below -- sorry --
25: well above glass transition phase, from your

(continued page 00113)

0113

01: understanding?

02: A. Uh-huh.

Page 00113

Defense Objections See Objection to Trial Exhibit 263 (Doc. 783-1); inadmissible other occurrence evidence not previously ruled on; not substantially similar; FRE 403/802/803:

09: MS. COWAN: All right. I'm going to mark
10: as Exhibit -- we're done with that one. I'm going
11: to mark as Exhibit 130 a document with the Bates
12: CHART62204.

Page 00113

Defense Counters Contingent on whether Trial Exhibit 263 is admitted:

19: MR. SMITH: Take a look at it and see if
20: you recognize it.
21: A. Yeah, if I can read through it. I mean, I
22: do see my name.
23: BY MS. COWAN:
24: Q. Take your time.
25: A. Thank you.

(continued page 00114)

0114

01: (The witness reviews the document.)
02: Q. I'm only going to ask you about the final
03: four pages of this exhibit. Of course you can read
04: whatever you want.
05: A. Okay. Thank you.

Defense Objections See Objection to Trial Exhibit 263 (Doc. 783-1); inadmissible other occurrence evidence not previously ruled on; not substantially similar; FRE 403/802/803:

06: Q. Sure. So I want to start with the last
07: email. And this is an email from Matt Kronenberger
08: to Kelly Grimmett and Rod Harnden.
09: Do you know who Matt Kronenberger is?
10: A. Yes and -- yes, I do. Not much about him,
11: though.
12: Q. What's his role?
13: A. I believe he's a sales rep for SRS.
14: Q. Okay. And what's SRS?
15: A. It's another one of our distributors that
16: we sell to.

Defense Counters Contingent on whether Trial Exhibit 263 is admitted:

17: Q. Okay. And who -- who is Kelly Grimmett, if
18: you know?
19: A. Really don't know her.
20: Q. And Rod Harnden?
21: A. Name sounds familiar, but like -- just like
22: Matt, I may have worked with him in the past a
23: number of times, yeah.

24: Q. Okay. But he's at this distributor?

25: A. Yes, ma'am.

(continued page 00115)

0115

01: Q. Okay. And in the email from

02: Mr. Kronenberger, he is reporting an issue with two

03: freezers, correct?

04: A. Yes, ma'am.

05: Q. All right. He says that they were leaking

06: and would create a giant pool of water on the floor

07: directly beneath them, and also that they would use

08: more LN2 than other freezers, and their temps were

09: erratic, correct?

10: A. Yes, that's what -- yep, that's what's

11: written.

12: Q. Okay. And it sounds like they shut them

13: down, cleaned it all up, turned them back on, and

14: again they started -- pools of water started to form

15: underneath them again, correct?

16: A. Yep.

17: Q. And then he noticed that once the LN2 got

18: to about three inches on the display, "the bottom of

19: freezers were sweating like crazy and very cold to

20: touch." So he says that "This, and the other

21: symptoms described by the users, lead me to believe

22: that they lost vacuum in the jacket."

23: Can you explain that to me, what -- your

24: understanding of that sentence?

25: A. Yes, ma'am. So there's a vacuum-insulated

(continued page 00116)

0116

01: space in between the inner vessel and the outer
02: vessel. That helps prevent the law of thorough
03: dynamics. Essentially, radiation from the ambient
04: air that we are in, it actually heats the inner of
05: that tank. Does that explain...
06: Q. Sure. And is your understanding here
07: essentially that the tanks lost vacuum?
08: A. Essentially, yes, ma'am, is why we jumped
09: on it.
10: Q. And you said you jumped on it. What does
11: that mean?
12: A. That we set up the replacement.
13: Q. Okay. And he says that these symptoms led
14: him to believe that this vacuum had failed.
15: Do these symptoms also indicate to you that
16: the vacuum had failed?
17: A. Yes, ma'am.
18: Q. Okay. So as we discussed before, a pool of
19: water or a sweating tank may be -- may be an example
20: of a symptom or process?
21: A. It could be. But there are times, like I
22: was stating earlier, that the humidity in the air
23: could cause the -- the LN2 venting out the tank to
24: evaporate on the tank -- or, excuse me, condensate
25: onto the tank. And you will see some sweating

(continued page 00117)

0117

01: around the neck. That's not necessarily a vacuum
02: failure; it's just the environment. But, yes,
03: around -- around the bottom of the tank, icing
04: building up, yes, that --

Page 00117

Defense Objections See Objection to Trial Exhibit 263 (Doc. 783-1); inadmissible other occurrence evidence not previously ruled on; not substantially similar; FRE 403/802/803:

07: Q. Okay. All right. And then this email
08: is -- Mr. Harnden sends a -- this thread to Bruce
09: Edel, Ramon Gonzalez, Kelly Grimmett, and Tony
10: Gandy. And he has -- the first is "Two consecutive
11: HECO units experience VACUUM FAILURE in San Antonio!
12: And it's bolded and highlighted.
13: So would you agree that this was a pretty
14: significant issue?
15: A. Yes, ma'am.
16: Q. And he states that these units are used for
17: bone marrow transplant. "This is very serious and
18: we don't want this to get around..... I really want
19: to know what happened when MVE gets these back for
20: evaluation."
21: Do you have any understanding of what he
22: meant by saying "We don't want this to get around"?
23: A. No, ma'am.
24: Q. Okay. What is your understanding of that?
25: A. To be honest with you, I don't know, since

(continued page 00118)

0118

01: I wasn't copied on this at the time. It would be
02: just an assumption that I guess they don't want
03: customers getting worried, I guess, is my
04: assumption.

Defense Counters Contingent on whether Trial Exhibit 263 is admitted:

05: Q. Okay. But I'm gathering from his email
06: that there was a desire to have these tanks
07: inspected and evaluated; is that correct?
08: A. Yes, from this email, yes.
09: Q. Okay. And it looks like from the next
10: email in this thread that you were involved in that;

11: is that correct?

12: A. Yeah. I got involved to replace those

13: freezers, yes.

14: Q. Okay. Were you involved in the

15: investigation as to what went wrong?

16: A. No, ma'am.

17: Q. Okay. Did you hear from anyone involved in

18: that investigation?

19: A. No, ma'am.

Page 00130

Plaintiffs Objections 602 speculation :

Defense Counters Contingent on whether 133:13-133:23 is admitted:

01: Q. How would the event log indicate if it was

02: end-user error?

03: MR. SMITH: Calls for speculation.

04: Incomplete hypothetical.

05: A. For instance, the events that we were just

06: looking at previously, at the time it called for a

07: fill. It hit its low level set point. The freezer

08: called for a fill, and then it went into fill timing

09: alarms and never filled because there's no supply to

10: go into the freezer. That would be an instance that

11: would allude me to believe that there was no LN2 in

12: the supply tank.

Page 00132

Plaintiffs Objections 602 no personal knowledge; 701 improper opinion by a lay witness :

22: Q. Is it end-user error to mute the alarm if

23: the liquid nitrogen level actually is fine, in your

24: opinion?

25: MR. SMITH: Incomplete hypothetical.

(continued page 00133)

0133

01: A. I mean, in my thought, yes, because they

02: should treat every alarm as a concern, and they need
03: to check the LN2 level. If they're just
04: continuously hitting alarm mute, then that's --
05: that's...
06: BY MS. COWAN:
07: Q. Right. No, I'm asking you if they did, in
08: fact, check the level.
09: A. Oh, I have no idea.

Page 00133

Defense Objections Objection -- lacks context; confusing; incomplete hypothetical; FRE 403; this question is imbedded with several pages of testimony about an email related to the events at PFC:

13: Q. If the controller goes off and it's
14: alarming, and the tech checks the level, and the
15: level is fine, would you consider it to be end-user
16: error to then mute the alarm?
17: A. No, I don't --
18: MR. SMITH: Incomplete hypothetical.
19: MR. TARANTINO: Join.
20: BY MS. COWAN:
21: Q. Go ahead, you can answer.
22: A. I don't consider that being end-user error
23: at that point.